

FLORIDA'S DEPENDENCY BENCHBOOK

BENCHCARD: PSYCHOTROPIC MEDICATION HEARING

Items in **bold font** are required by Florida Statutes.

- If the child comes into care with psychotropic medication already prescribed.
- DCF should attempt to obtain permission from the parent to continue the psychotropic medication. **§ 39.407(2)(a)1.**
 - If parental authorization cannot be obtained, DCF may take possession of the remaining medication and may continue to provide the medication as prescribed until the shelter hearing, if it is determined that the medication is a current prescription for that child and the medication is in its original container. **§ 39.407(3)(b)1.**
 - If DCF continues to provide the psychotropic medication to a child when parental authorization cannot be obtained, DCF shall notify the parent or legal guardian as soon as possible. The child's official departmental record must include the reason parental authorization was not initially obtained and an explanation of why the medication is necessary for the child's well-being. **§ 39.407(3)(b)2.**
 - If DCF is unable to get parental authorization and DCF is advised by a physician that the child should continue the psychotropic medication, DCF shall request court authorization at the shelter hearing to continue to provide the psychotropic medication and shall provide to the court any information in its possession in support of the request. Any authorization granted at the shelter hearing may extend only:
 - Until the arraignment hearing on the petition for adjudication of dependency, or
 - 28 days following the date of removal, whichever occurs sooner. **§ 39.407(3)(b)3; Rule 8.355(c)(1)(A).**
 - DCF should then schedule a physical evaluation with a licensed physician. **§ 39.407(3)(b)4.** DCF should also consider requesting a Comprehensive Behavioral Health Assessment (CBHA).
 - As a result of the required physician's evaluation, if DCF believes it is appropriate to continue the psychotropic medication beyond the time authorized by the court at the shelter hearing, DCF shall file a motion seeking continued court authorization at the same time as it files the dependency petition, within 21 days after the shelter hearing. **§ 39.407(3)(b)(4); Rule 8.355(c)(1)(B).**
 - The motion must be supported by the following:

- ♦ A written report prepared by DCF which describes the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and other treatments considered or recommended for the child.
- ♦ The prescribing physician's signed medical report providing:
 - The name of the child, the name and range of the dosage of the psychotropic medication, and that there is a need to prescribe psychotropic medication to the child based upon a diagnosed condition for which such medication is being prescribed.
 - A statement indicating that the physician has reviewed all medical information concerning the child which has been provided.
 - A statement indicating that the psychotropic medication, at its prescribed dosage, is appropriate for treating the child's diagnosed medical condition, as well as the behaviors and symptoms the medication, at its prescribed dosage, is expected to address.
 - An explanation of the nature and purpose of the treatment; the recognized side effects, risks, and contraindications of the medication; drug-interaction precautions; the possible effects of stopping the medication; and how the treatment will be monitored, followed by a statement indicating that this explanation was provided to the child, if age appropriate, and to the child's caregiver.
 - Documentation addressing whether the psychotropic medication will replace or supplement any other currently prescribed medications or treatments; the length of time the child is expected to be taking the medication; and any additional medical, mental health, behavioral, counseling, or other services that the prescribing physician recommends. § 39.407(3)(c)(5).
- The medication may be provided in advance of the issuance of a court order if the child's prescribing physician certifies in the signed medical report required in paragraph (c) that delay in providing a prescribed psychotropic medication would more likely than not cause significant harm to the child. The medical report must provide the specific reasons why the child may experience significant harm and the nature and the extent of the potential harm.

Note: Psychotropic medications may be administered in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Within 3 working days after the medication is begun, DCF must seek court authorization. § 39.407(3)(e)2; Rule 8.355(c)(3).

- DCF must submit a motion seeking continuation of the medication and the physician's medical report to the court, the child's guardian ad litem, and all other parties within 3 working days after DCF commences providing the medication to the child.

- DCF shall seek the order at the next regularly scheduled court hearing, or within 30 days after the date of the prescription, whichever occurs sooner.
- **If any party objects to DCF's motion, the court shall hold a hearing within 7 days. § 39.407(3)(e)1.**

Note: Access to medical records. Section 39.402(11)(b), requires the court to request the parent's consent to provide access to the child's medical records and further requires that when a parent is unavailable or unable to consent or withholds consent and the court deems access to the records necessary to provide services to the child, the court is to issue an order granting access to the records.

Note: Access to child care and educational records. Section 39.402(11)(c), requires the court to request that the parents consent to provide access to the child's child care records, early education program records, or other educational records and further requires that when a parent is unavailable or unable to consent or withholds consent and the court deems access to the records and information is necessary to provide services to the child, the court shall issue an order granting access.

➤ **If child needs to be evaluated/prescribed psychotropic medication after coming into care.**

- **DCF should schedule a physical evaluation with a licensed physician.**
§ 39.407(3)(b)4. DCF should also consider requesting a Comprehensive Behavioral Health Assessment (CBHA) and ensure that all medical reports have been provided to the prescribing physician.
- If the parents have not consented, DCF shall file a motion with the court to authorize the administration of the psychotropic medication.

The motion shall include the following information:

- DCF's written report describing the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and describing other treatments considered or recommended for the child; and
- The prescribing physician's signed medical report, as required by law, and whether the prescribing physician has obtained the child's assent to take the medication. Rule 8.355(a)(1).
- If the child declines to assent to the proposed administration of psychotropic medication the court shall appoint an attorney to represent the child and a hearing shall be held on the department's motion. The appointment must conform to the provisions of Rule 8.231. Rule 8.355(a)(2).
- The court shall hear DCF's motion at the next regularly scheduled court hearing required by law, or within 30 days after the date of the prescription, whichever occurs sooner. However, if any party files an objection to the motion, the court shall hold a hearing within 7 days. Rule 8.355(c)(2)(C).

- Determine whether parties and the child's attorney were properly served or noticed, if not in attendance.
 - **DCF must have notified all parties of the proposed action taken in writing or by whatever other method best ensures that all parties receive notification of the proposed action within 48 hours after the motion is filed. If any party objects to DCF's motion, that party should have filed the objection within 2 working days. § 39.407(3)(d)1; Rules 8.355(a)(3), 8.355(a)(4).**
- If the child assents and no party timely files an objection to DCF's motion, the court may enter its order authorizing the proposed administration of the psychotropic medication without a hearing. Rule 8.355(b)(1).
- Based on its determination of the best interests of the child, the court may order additional medical consultation or require the department to obtain a second opinion within a reasonable time, not more than 21 calendar days. Rule 8.355(b)(1).
- When the court orders an additional medical consultation or second medical opinion, the department shall file a written report including the results of this additional consultation or a copy of the second medical opinion with the court within the time required by the court, and shall serve a copy of the report as required by Rule 8.355. Rule 8.355(b)(1).
- If the child does not assent to the medication or any party timely files its objection to the proposed administration of psychotropic medication to the child, the court must hold a hearing as soon as possible on the department's motion.
 - At such hearing, the medical report of the prescribing physician is admissible in evidence. Rule 8.355(b)(2)(A).
 - At such hearing, the court must ask the department whether additional medical, mental health, behavioral, counseling, or other services are being provided to the child that the prescribing physician considers to be necessary or beneficial in treating the child's medical condition, and which the physician recommends or expects to be provided to the child with the medication. Rule 8.355(b)(2)(B).
 - The court may order additional medical consultation or a second medical opinion, as provided by Rule 8.355(b)(1). Rule 8.355(b)(2)(C).
 - After considering the department's motion and any testimony received, the court may order that the department provide or continue to provide the proposed psychotropic medication to the child, on a determination that it is in the child's best interest to do so. Rule 8.355(b)(2)(D).
- **Verify that DCF obtained a medical evaluation to determine the need to initiate or continue a psychotropic medication before filing the dependency petition. § 39.407(3)(b)(4).**
- **Determine if DCF attempted to include the parents in the decision making process. § 39.407(3)(a)1.**

- Did DCF take steps to include the parent in the child's consultation with the physician? § 39.407(3)(a)1.
- Did DCF attempt to obtain express and informed consent from the parents before filing the motion? § 39.407(3)(a)1.
- Confirm that DCF provided the evaluating physician with all pertinent medical information known to DCF concerning that child. § 39.407(3)(a)2.
- Verify that DCF's motion was supported by a written report prepared by DCF which describes the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and other treatments considered or recommended for the child. In addition, the motion must be supported by the prescribing physician's signed medical report providing as described above.

NOTE: The medical report of the prescribing physician is admissible into evidence. § 39.407(3)(d)1; Rule 8.355(b)(2)(A).

- Ask whether or not the parent, legal guardian, or child consents to the medication. See § 39.407(8).
- Determine if the motion for medication is in the child's best interests. § 39.407(3)(d)1; Rule 8.355(b)(2)(D).
- Ask DCF whether additional medical, mental health, behavioral, counseling, or other services are being provided to the child by DCF which the prescribing physician considers to be necessary or beneficial in treating the child's medical condition and which the physician recommends or expects to provide to the child in concert with the medication. § 39.407(3)(d)1; Rule 8.355(b)(2)(B).
- Be aware that the court may order additional medical consultation or require DCF to obtain a second opinion within 21 calendar days. DCF must make a referral for an appointment for a second opinion with a physician within 1 working day. § 39.407(3)(d)1.
- The court may not order the discontinuation of prescribed psychotropic medication if such order is contrary to the decision of the prescribing physician unless the court first obtains an opinion from a licensed psychiatrist, if available, or, if not available, a physician stating that more likely than not, discontinuing the medication would not cause significant harm to the child. If, however, the prescribing psychiatrist specializes in mental health care for children and adolescents, the court may not order the discontinuation of prescribed psychotropic medication unless the required opinion is also from a psychiatrist who specializes in mental health care for children and adolescents. The court may also order the discontinuation of prescribed psychotropic medication if a child's treating physician states that continuing the prescribed psychotropic medication would cause significant harm to the child because of a diagnosed non-psychiatric medical condition. § 39.407(3)(d)1.

- When the court orders an additional medical consultation or second medical opinion, DCF is required to file a written report including the results of this additional consultation or a copy of the second medical opinion with the court within the time required by the court. Rule 8.355(b)(1).
- The burden of proof shall be by a preponderance of the evidence. § 39.407(3)(d)2.

➤ Follow up.

- DCF shall fully inform the court of the child's medical and behavioral status as part of the JRSSR and shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, the court may review the status more frequently. § 39.407(3)(f)1.
- The parents or legal custodian remain financially responsible for the cost of medical treatment provided to the child even if either one or both of the parents or if the legal custodian did not consent to the medical treatment. After a hearing, the court may order the parents or legal custodian, if found able to do so, to reimburse DCF or other provider of medical services for treatment provided. § 39.407(13).
- DCF may consent to medical treatment for a dependent child when the child has been committed to DCF and DCF has become the legal custodian of the child. § 39.407(14).

➤ General information.

For further information regarding psychotropic medications, please see:

- The Florida Supreme Court Steering Committee on Families and Children in the Court, *Psychotropic Medications Judicial Reference Guide*, (March 2010).
- Daniel Castellanos, *The Psychotropic Medication Reference for Judges, Attorneys, Guardians ad Litem and other Legal Professionals Addressing the Use of Psychotropic Medications with Children in State Custody in Florida*, (2010).